Mercante's Sea Trials

Admiralty Laws: Laws You Can Choose!

To state the obvious, a marine insurance policy is a contract between you and your insurer. Not so obvious are the terms of the contract . . . which most boaters have no clue about.

If you get the right answer to even half of these questions, you're doing okay: Does your policy contain any warranties? Any conditions to coverage? Defined terms? What amount of liability coverage do you have? What's the lay-up period? Is there a navigation limit and if so, what is it? Is it an agreed-value policy or actual cash value? Is wreck removal covered? How about salvage? Pollution? Are there any terms that dictate your duties after a loss? Is there a seaworthiness provision? Is your friend covered if an accident occurs while operating your vessel? Are you covered while operating your friend's boat? What's not covered...can you name any exclusions? In the event of a dispute, is there a provision that provides what law is to apply?

Once upon a time

Okay, you failed. So, let's start at the end and talk about choice of law in the event of a dispute. For that we have to start at the beginning. A policy on a vessel is considered a maritime contract subject to admiralty jurisdiction in federal courts and application of admiralty law to any dispute. That is, of course, if there is admiralty law on point. The law is that if there is no admiralty law governing a particular policy issue in dispute, then the federal court is obliged to apply state law. But...which state's law? If the loss occurs in Florida, could another state's law apply, such as New York? Yes. But, how? Why?

General maritime law

There are some aspects of admiralty law and policy terms that are so steeped in the history of maritime parlance that they are considered well-entrenched enough to be part of the "general maritime law." Such genuinely salty terms include warranties of seaworthiness, lay-up periods and navigation limits. Other insurance policy terms that are not as entrenched in maritime heritage will be governed by state law in the event of a dispute. One goal of maritime lawyers is to protect and promote uniformity in maritime laws throughout the country so that the law will not vary from state to state in a marine dispute. Why should an outcome depend on whether an incident occurs in navigable waters of New Jersey, or Connecticut, or New York or Florida? Mariners (and marine insurers) should be entitled to know that the laws applicable to maritime issues are not location specific but should be uniform throughout the United States. This fosters less confusion to mariners, and even better predictability so that maritime lawyers can advise clients on applicable admiralty laws throughout the nation.

So, to reiterate - when there is no well-established admiralty law on point, a court will apply state law to a marine insurance contract dispute. Naturally, state law can vary from state to state and not all states have a well-defined body of insurance law that will apply to a marine dispute. New York, for one, does have a body of state insurance laws that specifically refer to marine issues. As such, it is not uncommon for a marine insurer to insert a choice-of -law clause in a policy that says something like this: "Any dispute arising hereunder shall be adjudicated according to well-established, entrenched principles and precedent of substantive United States Federal Admiralty law and practice, but where no such well-established, entrenched precedent exists, this insuring agreement is subject to the substantive laws of the state of New York." This particular wording is contained in the boating policy issued by London insurer Great Lakes Reinsurance (UK), PLC. Great Lakes has a substantial presence in and close ties to the state of New York.

Sinking - now what?

The choice-of-law clause was front and center in a recent dispute involving a sinking in Florida waters of a pleasure craft owned by a Florida resident. Coverage was declined for the sinking because the insured's son was operating the vessel at the time of the loss. The policy contained a warranty that the vessel will be operated only by "covered persons." The insured's son was not identified as a covered person either in the policy or in the application for insurance. The son reportedly had a checkered past of operating vessels including a conviction for reckless operation of a watercraft. Thus, the insurance underwriter testified at trial that even had the son been listed in the application as an operator, the application would have been rejected. The federal court in Florida had to determine whether or not the breach of the named operator warranty voided coverage for the sinking. The all-important sub-issue became what law applied to the dispute, to wit, admiralty law, Florida law or New York law.

Trial

The dispute wound up at trial in Federal court in Florida before U.S. District Court Judge Jordan Adalberto. In a particularly thorough marine insurance law lesson, the judge enforced the policy's choice-of-law clause and applied New York law to determine if indeed the insured breached a maritime warranty contained in the policy.

Choice of law questions are not uncommon to admiralty practitioners simply due to the nature of the maritime business, including commerce, navigation between states, etc. Typically, a choice of law provision in a marine insurance contract will be upheld if its enforcement would not be "unreasonable" or "unjust."

In the Great Lakes policy quoted above, the provision first calls for the application of maritime law to any dispute. Judge Adalberto (who has recently received a Presidential appointment to the Eleventh Circuit Court of Appeals) found nothing problematic about parties to a marine policy agreeing to the application of federal maritime law if it exists on a particular issue. Next, the court decided that the policy's alternative choice of New York law (if there is no established and entrenched federal admiralty precedent) should also be given effect. While recognizing that the insured was a Florida resident, the loss occurred in Florida, and the policy was issued in Florida, the court noted that New York state had a sufficient relationship with the insurance company to allow the application of New York law to be reasonable and just. For example, the London insurer had first applied to be a surplus lines carrier in New York, maintains bank accounts in New York, has an agent for service of process in New York and its parent company's office is in New York. Thus, the judge found no basis to disregard the policy's alternative choice of New York law.

Warranties

The issue then shifted to the warranty. Admiralty law requires strict compliance with express warranties in a marine insurance policy. Breach of an express warranty (such as the named operator provision at issue) releases the insurance company from liability even if the breach is not "causally related" to the loss. Here's an example: If a vessel owner breaches an express warranty by venturing beyond the policy's stated navigation limits and the vessel sinks due to a manufacturing defect, there will likely be no coverage under admiralty law despite the fact that being outside the permitted navigation area had nothing to do with the defect that caused the sinking. But, as mentioned before, this strict rule only applies where there is well-entrenched admiralty law involving the particular warranty in dispute, like there is for a navigation limits warranty. If there is no such well-established admiralty law on point, then the courts will defer to state law, and many states do require a causal relationship between the loss and the breach (i.e. that the breach increased the hazard or the risk of loss) before coverage will be forfeited. But which state's law will apply?

In this case, the judge considered the policy's choice-of-law provision and evaluated the sinking facts under both admiralty and New York law, and for belt and suspenders, even looked to Florida state law. The judge determined that the operation of the vessel by the insured's son not only breached the policy's express warranty but also was causally linked to the sinking due to the poor navigational choices he made.

The court found no established and entrenched federal admiralty precedent on point pertaining to a "named operator" warranty and, therefore, looked to New York State law for the answer, as provided by the policy's choice of law clause. The two New York case precedents on point (handled by us) and relied upon by the Florida judge did indeed preclude insurance coverage for a casualty where the person operating the vessel was not a covered person or named operator.

As a result, the insured forfeited her insurance coverage for the loss by allowing her son to operate the boat.

Conclusion

A boater must be familiar with the terms, conditions and warranties of his or her marine insurance policy, and it "pays" to comply with them. As for what is and what is not entrenched and established in maritime law, you may have to seek out established and entrenched maritime counsel!

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